

SIKKIM



GOVERNMENT

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Friday 5th June, 2009

No. 196

**THE HIGH COURT OF SIKKIM
GANGTOK**

No. 8/HCS

Dated 05.06.2009

NOTIFICATION

In exercise of the powers conferred under Section 34(1) read with Section 16(2) of the Advocates Act, 1961, the High Court of Sikkim makes the following Rules for designation of Senior Advocates.

[1] Short title and commencement:

- (i) These Rules may be called the High Court of Sikkim Designation of Senior Advocates Rules, 2009.
- (ii) These Rules shall extend throughout the jurisdiction of the High Court of Sikkim.
- (iii) They shall come into force on the date of their publication in the Official Gazette.

[2] Definitions: - In these Rules, unless the context otherwise requires,

- (a) "The Act" means the Advocates Act, 1961.
- (b) "Advocate" means an Advocate entered in the roll under the provision of the Act.
- (c) "Court" means the High Court of Sikkim and all the Subordinate Courts of Sikkim under the jurisdiction of the High Court of Sikkim.
- (d) "High Court" means the High Court of Sikkim at Gangtok.

- (e) "standing at the Bar" means the position of eminence attained by an Advocate, by virtue of his integrity, seniority, legal acumen and high ethical standards maintained by him both inside and outside the Court.
- (f) "State Bar Council" means the Bar Council of Assam, Nagaland, Meghalaya, Manipur, Tripura, Mizoram, Arunachal Pradesh and Sikkim, at Guwahati.

[3] Who may be designated as Senior Advocate:

The High Court may designate an Advocate with his consent, as Senior Advocate, if in its opinion that by virtue of his ability, standing at the Bar or special knowledge or experience in law, he is deserving of such distinction.

[4] Procedure for designation as Senior Advocate:

- (a) Such designation as Senior Advocate shall be considered on the written proposal made by any of the following proposers: -
 - (i) the Chief Justice of the High Court; or
 - (ii) any sitting Judge of the High Court; or
 - (iii) the Advocate General of the State of Sikkim, provided he himself is a Senior Advocate; or
 - (iv) two practising Senior Advocates of the High Court.
- (b) No Advocate shall be eligible to be designated as Senior Advocate unless: -
 - (i) he has completed 35 years of age.
 - (ii) has a minimum of 10 years standing at the Bar as an Advocate in any Court within the jurisdiction of the High Court.

While calculating the aforesaid standing of 10 years, the period spent by a Judicial Officer during his service career shall be taken into consideration.

- (iii) is a permanent resident of the State of Sikkim under the jurisdiction of the High Court.
- (iv) has income of not less than Rs. 2,00,000/- (Rupees two lakhs) per annum:

Provided that if such an Advocate is liable to be taxed under the Income Tax Act, 1961; and in case of those who are not liable to pay tax, a statement to the extent of income shall be furnished.

Provided further that the High Court for reasons to be recorded in writing, may grant exemption to any individual member from the requirements of Rule 4 (b) (iv) above, regarding income.

(c) The proposal shall be in Form 'A' appended to these Rules.

[5] Consent of the concerned Advocate:

Insofar as Clauses (i) and (ii) of Rule 4(a) above are concerned, a proposal may be initiated after ascertaining the inclination of the Advocate concerned.

Insofar as Clauses (iii) and (iv) of Rule 4(a) are concerned, the consent of the Advocate concerned shall be appended along with the proposal.

[6] Immediately on receipt of the proposal, the same shall be entered in a Register maintained in the Registry for such purpose.

[7] Consideration of the proposal by the High Court:

(a) The proposal for designation of an Advocate as Senior Advocate shall be considered at a meeting of the Full Court except in cases mentioned in Rule 10(c) below. It shall be accepted only if at such meeting not less than two third of the total number of Judges present are in favour of accepting the proposal.

(b) A proposal once rejected, shall not be considered again for designation as Senior Advocate, unless two years have expired since the date of such consideration.

(c) In case of an Advocate holding the office of Advocate General of the State under the jurisdiction of the High Court, the designation of such Advocate as Senior Advocate may be made by the Chief Justice.

[8] Process on designation as Senior Advocate by the Full Court:

(i) The name of the concerned Senior Advocate shall be entered in the Register of the Senior Advocates to be maintained by the Registry.

(ii) The Registrar General shall notify such designation(s) to the following: -

(a) The Bar Association of Sikkim,

(b) All District and Sessions Judges in the State of Sikkim,

- (c) All Chief Judicial Magistrate-cum-Civil Judges and Civil Judge-cum-Judicial Magistrates in the State of Sikkim,
- (d) The State Bar Council,
- (e) The Bar Council of India, New Delhi,
- (f) The Secretary General of the Supreme Court of India,
- (g) The Secretary, Supreme Court Bar Association, New Delhi.
- (h) Registrar Generals of all other High Courts and
- (i) The concerned designated Senior Advocate.

[9] Withdrawal of the conferment of Senior Advocate:

The designation of Senior Advocate may be withdrawn by the High Court, after due notice in the event it is found that,

- (i) the Senior Advocate has violated any or all of the provisions of the Act and the Rules prescribed by the Bar Council of India under Section 16(3) and Section 49(1) (g) of the Act as provided at Annexure 'A' of that Rules; or,
- (ii) in the event it is reported by the Supreme Court or any other High Court or by any Judge of the High Court of Sikkim; or by any authority or any person, supporting, *prima facie*, in Rule 9(i) and (ii) above, that by virtue of the Senior Advocates conduct and behaviour, either inside or outside the Court, he/she has forfeited his/her privilege, after due notice to the Senior Advocate concerned.

[10] (i) The Registrar General shall notify the decision of such withdrawal as provided in Rule 8 (ii) of these Rules.

(ii) A record of all such decisions shall be maintained in the Registry of the High Court.

[11] Repeal:

On notification of these Rules in the Official Gazette, the Designation of Senior Advocates Rules, 2006, shall stand repealed.

**FORM OF PROPOSAL FOR DESIGNATION AS SENIOR ADVOCATE
FORM 'A'**

1. Name of the Advocate
2. Permanent Address.....
3. Educational Qualification.....
4. Date of birth
5. Date of enrolment as Advocate
and where enrolled.....
6. Number in the Roll of advocates
maintained by the State Bar Council
and date thereof.....
7. Is the Advocate under proposal
as assessee under the Income Tax Act, 1961
in respect of his professional income;
if so, give details of the income
assessed for the last 3(three) years and
Permanent Income Tax Account Number (PAN).....
8. Other information (s) (optional);
if any, including legal aid work
publication of books, journals,
participation in Seminar/Conference,
association with any Faculty of Law etc. etc.....

Date:

SIGNATURE OF PROPOSER

I hereby express and give my consent to be designated as Senior Advocate by the High Court
of Sikkim.

Dated this day of

**SIGNATURE OF THE
ADVOCATE CONCERNED**

By order,

MEENAKSHI M. RAI
REGISTRAR GENERAL
HIGH COURT OF SIKKIM
DATED: 5. 6. 09

ANNEXURE 'A'
Restrictions on Senior Advocate

[Rules under Section 16(3) and 49 (1) (g) of the Act]

A Senior Advocate shall, in the matter of practice of the profession of law mentioned in Section 30 of the Act, be subject to the following restrictions:

(a) A Senior Advocate shall not file Vakalatnama or act in any Court, or tribunal or before any person or other authority mentioned in Section 30 of the Act.

Explanation:- "To act" means to file an appearance or any pleading or application in any Court or tribunal or before any person or other authority mentioned in Section 30 of the Act, or to do any Act other than pleading required or authorised by law to be done by a party, in such Court, or tribunal, or before any person or other authority mentioned in the said section, either in person or by his recognised agent or by an advocate or an attorney on his behalf.

(b) (i) A Senior Advocate shall not appear without an advocate on record in the Supreme Court, or without an advocate enrolled in the State Roll, in any Court, or tribunal or before any person or other authorities mentioned in Section 30 of the Act.

(ii) Where a Senior Advocate has been engaged prior to the coming into force of these Rules, he shall not continue thereafter unless an advocate enrolled in the State Roll is engaged along with him; provided that a Senior Advocate may continue to appear without an advocate enrolled in the State Roll in cases in which he had been briefed to appear for the prosecution or the defence in a criminal case, if he was so briefed before he was designated as Senior Advocate or before the coming into operation of these Rules as the case may be.

(c) He shall not accept instructions to draft pleading or affidavits, advice on evidence or to do any drafting work of an analogous kind in any Court, or tribunal or before any person or other authority mentioned in Section 30 of the Act or undertake conveyancing work of any kind whatsoever. This restriction however, shall not extend to settling any such matter as aforesaid in consultation with an advocate enrolled in the State Roll.

(cc) A Senior Advocate shall, however, be free to make concessions or give undertakings in the course of arguments on behalf of his clients on instructions from the junior advocates.

(d) He shall not accept directly from a client any brief or instructions to appear in any Court, or tribunal, or before any person or other authority in India.

(e) A Senior Advocate who had acted as an advocate (Junior in a case, shall not after he has been designated as a Senior Advocate) advice on grounds of appeal in a Court of appeal or in the Supreme Court, except with an advocate as aforementioned.

(f) A Senior Advocate may in recognition of the services rendered by an advocate enrolled in the State Roll appearing in any matter, pay him a fee which be considers reasonable.

By order,

**MEENAKSHI M. RAI
REGISTRAR GENERAL
DATED:**

